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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. [redacted] 213

GRAIN MERCHANTS OF INDIANA, INC., ET AL.,
BANKRUPTS

Petitioners,

MARK L. FRANCE, TRUSTEE,

vs.

UNION BANK AND SAVINGS COMPANY,
BELLEVUE, OHIO,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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PETITION FOR CERTIORARI.

Mark L. France, Trustee in Bankruptcy for Grain Merchants of Indiana, Inc., Bankrupt, Petitioner, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the entitled case on March 13, 1969.

OPINIONS BELOW.

The basic opinion and order involved in this application is that of Referee Robert K. Rodibaugh, issued on February 9, 1968 in Bankruptcy No. 7259, United States District Court for the Northern District of Indiana, Fort Wayne Division, ordering Union Bank and Savings Company, Bellevue, Ohio, to turn over to the Trustee in Bankruptcy the sum of Fifty-Two Thousand Forty-one and 49/100 Dollars ($52,441.49), said amount representing the proceeds of accounts receivable payable to Grain Merchants of Indiana, Inc. which arose after September 20, 1966 and which were preferentially transferred to Union Bank and Savings Company, Bellevue, Ohio. Said opinion and order is unreported.

Pursuant to Petition for Review by Union Bank and Savings Company, Bellevue, Ohio, the United States District Court for the Northern District of Indiana, Fort Wayne Division in a Memorandum of Decision and Order entered July 8, 1968, set aside the Referee in Bankruptcy's Turn Over Order and remanded the cause for a further determination and for further proceedings in accordance with the court's opinion and with law. The District Court's Memorandum of Opinion and Order is reported at 286 F. Supp. 596.

An appeal of the District Court's order was taken by the Trustee in Bankruptcy to the United States Court of Appeals for the Seventh Circuit which court, by opinion entered March 13, 1969, affirmed the order of the United States District Court. The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 408 Federal 2d, 209.

All of the opinions referred to are reprinted in the Appendix hereto.

JURISDICTION.

This is a controversy arising in a proceeding involving conflicting claims to the proceeds of bankrupt's accounts receivable. Federal jurisdiction is conferred under Section 24(a) of the Bankruptcy Act, 11 USC ¶ 47a.

This court's jurisdiction is invoked under 28 U. S. Code, Paragraph 1254 (1).

QUESTIONS PRESENTED.

Whether the $52,441.49 representing proceeds of accounts receivable of Grain Merchants of Indiana, Inc. which came into existence after September 20, 1966 and which were seized and applied by the Union Bank and Savings Company, Bellevue, Ohio to obligations owed it by Grain Merchants of Indiana, Inc. were preferentially transferred under the provisions of Section 60 of the Bankruptcy Act.

Whether pursuant to the provisions of Sections 70(c) and 70 (e) of the Bankruptcy Act the position of the Trustee in Bankruptcy was superior to that of the Union Bank and Savings Company of Bellevue, Ohio which possessed an unperfected lien on accounts receivable which came into existence after September 20, 1966, for the reason that said accounts were transferred for an antecedent debt, all other elements of a preference under Section 60 of the Bankruptcy Act being present.

CONSTITUTIONAL PROVISION, PORTIONS OF THE BANKRUPTCY ACT AND PORTIONS OF THE UNIFORM COMMERCIAL CODE INVOLVED.

The Constitutional provisions, portions of the Bankruptcy Act and portions of the Uniform Commercial Code involved in the question presented are set forth in Appendix D, *infra,* pages 60A-63A.